



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1996

Mr. John Steiner
Division Chief
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR96-2224

Dear Mr. Steiner:

You have asked whether certain information is subject to required public disclosure under Government Code chapter 552. We assigned your request ID# 101933.

The City of Austin (the "city") received a request for "copies of any and all Travis County criminal files" concerning a named individual, who is deceased. You have submitted to this office as responsive to the request records from the Austin Police Department. You assert that these records are excepted from disclosure pursuant to section 552.108.

The information requested appears to be a request for criminal history information maintained on the deceased individual. We note that criminal history information is generally protected from disclosure as information protected by common-law privacy. *Industrial Found. v. Texas Indust. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The privacy interest in criminal history record information has been recognized by federal regulations which limit access to criminal history record information which states obtain from the federal government or other states. See 28 C.F.R. § 20; *see also United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (finding criminal history information protected from disclosure under Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552a).¹ Recognition of this privacy interest has been

¹ The Code of Federal Regulations defines "criminal history information" as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release." 28 C.F.R. § 20.3(b). The information at issue here fits this description.

recognized in open records decisions issued by this office. *See* Open Records Decision Nos. 616 (1993), 565 (1990), 216 (1978), 183 (1978), 144 (1976), 127 (1976). However, as the individual's right to privacy is a personal right that does not survive death, common-law privacy will not protect this information from disclosure. *See* Open Records Decision No. 432 (1985) (concluding that photographs of deceased accident victim not protected by privacy).

Some of the information submitted to this office may be confidential by statute. Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of criminal history information obtained from DPS also apply to criminal history information obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain criminal history information from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, if any of the submitted information was obtained from DPS or any other criminal justice agency, that information may not be released to this requestor.

You have also asserted that section 552.108 of the Government Code protects from disclosure the information submitted to this office. Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We agree that the information submitted to this office that is not otherwise protected by chapter 411 of the Government Code, is excepted from disclosure pursuant to section 552.108.

However, some information appears to be front page offense or arrest report information. The type of information normally found on the front page of an offense or arrest report is generally considered public and must be released. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). The front page offense and arrest report information must be disclosed. The remaining information may be withheld from disclosure under section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Enclosures: Submitted documents

Ref.: ID# 101933

cc: Mr. William Collins
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(w/o enclosures)